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Subject: Docket ID No. EPA-HQ-OA-2017-0190
TSCA Inadvertent PCB Allowance Discrepancy with Water Quality Standards

In consideration of President Trump's signed Executive Order 13777 and EPA's Docket ID No. EPA-HQ-OA-2017-0190, this comment letter is sent on behalf of the Spokane River Regional Toxics Task Force (SRRTTF) requesting evaluation and correction of discrepancies that exist between the Toxics Substance Control Act (TSCA) and Water Quality Standard regulations for Polychlorinated Biphenyls (PCBs).

The SRRTTF, facilitated by the William D. Ruckelshaus Center, represents municipal and industrial permitted dischargers, conservation and environmental interests, and state and federal regulatory agencies in Washington and Idaho. This innovative direct- to-implementation process brings all stakeholders together in a collaborative effort to address PCB water quality concerns in the Spokane River. The purpose of the SRRTTF is to "work collaboratively to characterize the sources of toxics in the Spokane River and identify and implement appropriate actions needed to make measurable progress towards meeting applicable water quality standards for the State of Washington, State of Idaho, and The Spokane Tribe of Indians and in the interests of public and environmental health."

The SRRTTF has worked diligently since 2012 to identify and reduce sources of PCBs from entering the Spokane River. It is evident from our analysis that a significant contribution of PCBs to the Spokane River watershed originates from sources currently allowed under the EPA TSCA regulations. The concentrations of PCBs allowed under TSCA in commercial and industrial products are billions of times higher than the water quality criteria for PCBs that EPA has imposed on the State of Washington. The EPA water quality criteria for PCBs are unattainable. Washington and Idaho state communities and businesses are nonetheless burdened to address PCBs under section 303(d) and to implement treatment technologies. The inconsistency between the TSCA allowance and the water quality criteria will likely result in continued contamination of the environment, impairment of our watersheds, municipal and industrial dischargers in potential non-compliance with NPDES permits, perpetual investment in expensive water treatment technologies, exposure to citizen lawsuits, elimination of paper recycling, and the loss of existing and future businesses and industry. Additionally, the Spokane River, as well as other rivers in the U.S. with Clean Water Act 303(d) listings for PCBs, may never



meet EPA water quality criteria for PCBs as long as EPA continues to allow for new PCB generation at the current high levels under TSCA.

This is a national issue and not just isolated to the Spokane River watershed. There are almost 5,600 water bodies in the United States that are listed for PCBs¹ and more than 1,000 fish advisories for PCBs in 40 states². PCB-contaminated fish are the primary source of PCBs for people in the United States³ and PCBs continue to pose a potential threat to human health and the environment⁴. PCB-11, a congener specific to pigments, has been found in the waters of California, Delaware, Oregon, New York, New Jersey, Texas, and Washington⁵. Of the limited number of PCB water quality clean-up plans, Total Maximum Daily Loads (TMDLs), prepared to date, not one water body in the country has successfully met applicable water quality standards for PCBs through the TMDL process.

When EPA initially banned PCB manufacturing and/or restricted PCB uses under the TSCA, some authorized uses remained under 40 C.F.R. § 761.3, Paragraph (1):

The concentration of inadvertently generated PCBs in products leaving any manufacturing site or imported into the United States must have an annual average of less than 25 ppm, with a 50 ppm maximum.

EPA has identified over 200 chemical processes that may result in inadvertently generated PCBs. Studies by the SRRTTF show that allowable concentrations of PCBs in consumer products represent an ongoing source of PCB loading to the Spokane River that, through normal use, contributes to exceedances of the applicable water quality standards based on unapproved EPA test methods^{5, 6}. Members of the SRRTTF have identified numerous consumer products that contain significant concentrations of PCBs that pose a potential threat to human health and the environment, including: inks/pigments/paints/colorants/dyes, printed material/newsprint/magazines, road striping, children's products, clothing, Hydroseed, plastic bags, caulk, sidewalk chalk, packaging/labels, soaps and toothpaste.

On November 28, 2016, the EPA published revised Water Quality Standards for Washington State⁷. The EPA rule lowered the PCB criterion applicable in Washington State from 170 parts per quadrillion (ppq) to 7 ppq. The new criterion is over 7 billion times lower than the 50 ppm currently allowable for inadvertently produced PCBs under TSCA. With this new rule, every

¹ http://iaspub.epa.gov/waters10/attains_nation_cy.control

² <http://water.epa.gov/scitech/swguidance/fishshellfish/fishadvisories/>

³ <http://www.atsdr.cdc.gov/csem/pcb/docs/pcb.pdf>

⁴ <http://srtrtf.org/wp-content/uploads/2012/09/ECOS-Resolution-12-9-PCBs-in-products-Approved-8-28-12.pdf>

⁵ Jia Guo in <http://www.p2.org/wp-content/uploads/june-27-pcbs-webinar.pdf>

⁶ <http://srtrtf.org/wp-content/uploads/2015/03/Revised-Product-Testing-Report-7-21-15.pdf>

⁷ <https://www.gpo.gov/fdsys/pkg/FR-2016-11-28/pdf/2016-28424.pdf>

water body in the State of Washington could fail to meet water quality standards for PCBs. This situation is not unique to Washington.

Section 3(a) of the Executive Order (EO) directs federal agencies to establish a Regulatory Reform Task Force (Task Force) to evaluate existing regulations and “make recommendations to the agency head regarding their repeal, replacement, or modification.” The EO provides specific criteria for the Task Force to use in their evaluation in an effort to identify regulations that are economically burdensome. The discrepancy between the TSCA inadvertent PCB allowance and the WQS transcends many of these criteria outlined in Section 3(a) of the EO, including:

- (i) Eliminate jobs, or inhibit job creation;*
- (ii) are outdated, unnecessary, or ineffective;*
- (iii) impose costs that exceed benefits;*
- (iv) create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies;*

The SRRTTF requests that EPA evaluate and correct the discrepancy that exists between the TSCA and water quality criteria for PCBs based on the merits of the EO and EPA’s referenced dockets. We request that EPA evaluate and update the TSCA regulations to eliminate continuing sources of PCBs that are currently allowed in a broad range of industrial and commercial products.